

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rates for Interstate Inmate Calling)	WC Docket No. 12-375
Services)	

FURTHER COMMENTS OF PAY TEL COMMUNICATIONS, INC.

Pay Tel Communications, Inc. (“Pay Tel”), by its attorneys, respectfully submits these further comments in response to the *Public Notice*, WC Docket No. 12-375 (“Public Notice”), released June 26, 2013, in the above-captioned proceeding. In the Public Notice, the Wireline Competition Bureau (“Bureau”) seeks additional comment on certain fees related to inmate calling services (“ICS”).

The Bureau notes that the record in this proceeding has shown that certain ICS providers may charge ICS account holders fees that appear ancillary to making calls, such as account setup fees, account replenishment fees, account refund fees, and account inactivity fees (collectively, “Ancillary ICS Fees”). The Bureau requests that parties provide data and information about such fees, including:

[T]hat parties identify any Ancillary ICS Fees that ICS providers charge in connection with the provision of interstate ICS, the level of each fee, total amount of revenue received from each fee, and cost of providing the service for which the fee recovers. We also request that parties identify any portion of ancillary service costs that are shared or common to provision of other services, and explain how these costs, and recovery of them, are apportioned among the services to which they are shared or common.

More generally, the Bureau seeks additional ICS cost data relating to ICS service itself so that the costs associated with ancillary services can be evaluated in the context of overall service costs.¹

I. ANCILLARY FEES

Pay Tel has previously submitted comments in this proceeding urging the Commission to regulate Ancillary ICS Fees as a component of comprehensive ICS reform. *See, e.g.*, Pay Tel Comments at 14-16; Reply Comments at 3 n.6; Notice of Ex Parte Presentation at 1 (May 31, 2013). Other commenters have recognized the problem of Ancillary ICS Fees. *See, e.g.*, Wright Petitioners' Comments at 24-27; Human Rights Defense Center Comments at 8; Michael S. Hamden Comments at 7-9; Stephen A. Raher Reply Comments at 9-10; *see generally* Prison Policy Initiative Report, *Please Deposit All of Your Money: Kickbacks, Rates and Fees in the Jail Phone Industry*.

A. Ancillary Fees Charged by ICS Providers

Historically, Pay Tel has recovered its administrative costs through a single Bill Processing Fee. The costs recovered through this single fee are related to administration, billing, collection and remittance of various government-mandated taxes and fees and other amounts associated with Pay Tel's billing and remitting of monthly statements for ICS. This Bill Processing Fee is \$2.45. It is charged to consumers once a month, and it is only charged in months when there are billable calls. It is the only recurring fee that Pay Tel charges.

¹ Pay Tel has engaged a consultant to perform an analysis of its costs with the intention of refreshing the data currently in the record demonstrating ICS costs. To the extent that the Commission adopts a protective order in this proceeding protecting against public discovery of Pay Tel's confidential and proprietary information, Pay Tel is prepared to submit additional cost information in this proceeding.

The following list includes examples of the fees found in various other ICS vendor tariffs. Pay Tel agrees that these fees can significantly increase consumer cost and must be addressed in order to provide meaningful regulation of the true cost of inmate phone calls.

- Account Maintenance Charge
- Account Setup Fee
- Biometric or Voice Verification Charge
- Billing Cost Recovery Fee
- Bill Processing Fee
- Bill Statement Fee
- Carrier Cost Recovery Fee
- Convenience Fee
- Customer Statement / Invoice Fee
- Federal Regulatory Cost Recovery Fee
- Network Infrastructure Fee
- Public Telephone Surcharge
- Refund Charge
- Regulatory Assessment Fee
- Regulatory & Carrier Cost Recovery Fee (for Prepaid & Debit calls)
- Regulatory Cost Recovery Fee
- State Regulatory Recovery Fee
- USF Administrative Fee
- Validation Surcharge
- Wireless Administrative Fee

B. Payment Processing Fees

There are very real costs associated with processing of payments, whether processing is accomplished directly by the ICS provider or by a third party. These include the cost of credit card payment processing, charge-backs, personnel time (for live operator account set-up or manual handling of mail payments), compliance with PCI regulations, fraud prevention and management, customer refunds via credit cards, etc. Additionally, consumers have choices in terms of how to make payments, and those who choose more cost-effective options should not be penalized because others elect more expensive options.

The following table shows the range of fees charged for payment processing gathered from publicly available information, including ICS vendor websites. The disparity in the figures is confusing to consumers, serves to drive up the overall cost of inmate calling, and suggests that some ICS providers are using payment processing fees, which are excluded when calculating facility commissions, as profit centers.

Payment Options

Payment Type	Pay Tel	Other Vendor Fees as High as
Mail Check or Money Order	Free	unknown
Web Site Payment	\$3.00	\$10.00 or \$5.00 + 30.5% of payment amount
Automated Phone Payment	\$3.00	\$10.00 or \$5.00 + 30.5% of payment amount
Live Agent Phone Payment	\$5.95	\$10.00 or \$5.00 + 30.5% of payment amount
Money Gram - Wal-Mart	\$5.65	\$10.95
MoneyGram - Other	\$5.95	\$10.95
Western Union	\$5.95	\$12.95

As previously demonstrated by Pay Tel in this proceeding, in a jail setting the turnover of inmates is rapid. In jails, only two percent of called parties elect to take the time to complete a credit application for direct billing, meaning that the vast majority of customers use the prepaid account option. Moreover, because inmate stays in jails are typically short, the free payment option (mail check or money order) is simply not feasible in a jail setting; demonstrating this point, Pay Tel receives less than one percent of its payments through the mail.

In light of the real costs incurred in connection with payment processing in today's jail environment, ICS providers must be permitted to recover their costs, but this mechanism should be limited to cost recovery and should not be used as a vehicle to avoid rate caps or commission payments (see below for Pay Tel's recommendations).

C. Third Party Payment Services

Many ICS vendors typically characterize fees charged by third party payment services such as MoneyGram or Western Union as being “set by the third party provider.” In reality, the ICS vendors have the option of selecting different third party payment services rates and, based on the inflated rates selected by some providers, it appears that some ICS providers may have entered into profit sharing arrangements with the payment processors. Pay Tel has not elected to enter into such arrangements and instead has negotiated the lowest fees possible for its customers. Meaningful reform of the ICS industry will require attention to all fees, including third party payment services, to ensure that the payment options are priced for cost recovery and not used as a way to circumvent rate caps.

D. Recommendations

Pay Tel’s experience in the ICS market has confirmed that the proliferation of fees increases the overall cost of inmate calling to consumers and can serve as a hidden profit center for many ICS vendors. As part of any comprehensive reform of ICS—including adoption of intra- and interstate rates that are fully compensatory to ICS providers and cost recovery for facilities—Pay Tel recommends the following action with regard to fees.

- (1) Allow Pass-Through Mandated Regulatory Fees and Taxes.** Regulatory fees such as universal service fund payment recovery and state and local taxes should be passed through to consumers. But, in no event should the amount collected exceed the amount ultimately paid by the ICS provider to the taxing authority or regulatory agency, and the applicable fee and/or tax should be charged to the consumer at the time of the call (as opposed to collection in advance on prepaid amounts).
- (2) Allow Payment Processing Fees at Capped Rate.** ICS providers should be permitted to assess payment processing fees as follows:

Type	Proposed Cap
Web payments	Not to exceed \$3.00
Automated IVR Phone Payments	Not to exceed \$3.00
Live Agent Payments	Not to exceed \$5.95
Third Party Payments (WesternUnion, MoneyGram and other unaffiliated payment processors)	Lowest payment option available from the Third Party Vendor with no fee revenue share commission paid to the ICS Vendor
Mail Payments	No fee

- (3) **Allow Third-Party Technology Fees.** ICS providers should be permitted to recover the costs of third-party technology (e.g., security advances such as Voice Biometrics) that is targeted towards particular facilities, but such recovery should be cost justified.
- (4) **Prohibit Other Unsubstantiated Fees.** Except as stated above or otherwise authorized by law or order of the FCC or a state commission with appropriate regulatory authority, Ancillary ICS Fees should be prohibited.

II. ICS COSTS

In the Public Notice, the Bureau seeks updated data, generally, on ICS costs. As noticed in the Commission’s Notice of Proposed Rulemaking, the Wood Study submitted on behalf of various ICS providers in 2008 demonstrated costs including a fixed per-call cost of \$1.56 with a per-minute cost of \$0.06 for debit calls, and a fixed per-call cost of \$2.49 with a per-minute cost of \$0.07 for collect calls, applicable to participating ICS providers for a marginal location. This analysis, however, excluded certain higher cost correctional facilities and also did not factor in commission payments required by facilities to defray the costs of ICS administration.

Along with its comments in this proceeding, Securus Technologies, Inc. (“Securus”) submitted a report prepared by economist Stephen E. Siwek (the “Siwek Report”) analyzing the company’s costs based on facility size and/or type. The Siwek Report depicts the varying costs

of serving low, medium and high call volume jails (“Non-DOCs”) and state departments of correction (“DOCs”). A representative sampling of facilities was used to calculate the cost of providing service for each of the categories. Such distinctions are appropriate for Securus, given its broad customer base.

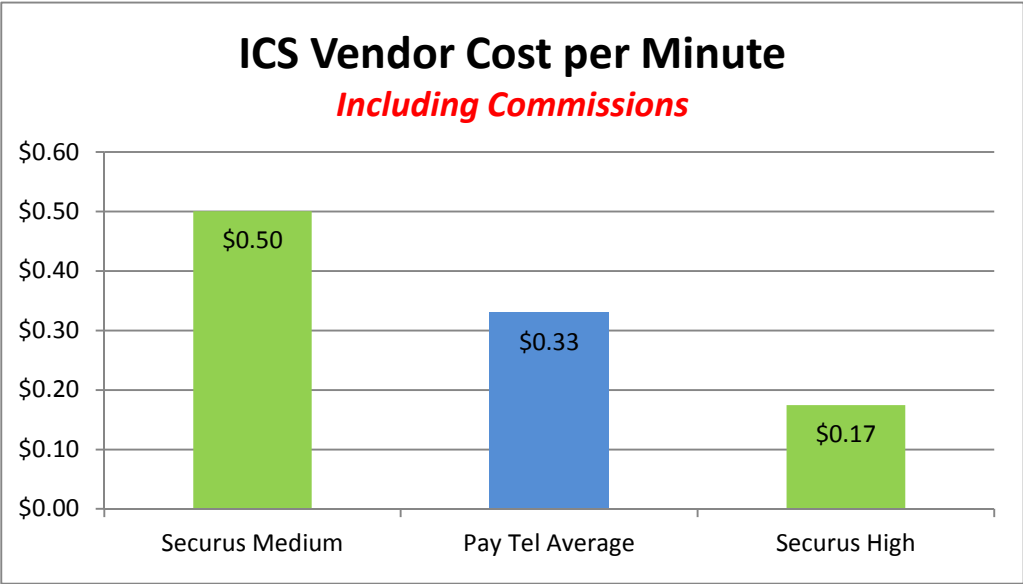
Pay Tel has further analyzed its current cost structure in response to the Bureau’s Public Notice and analyzed its costs as compared to other ICS costs demonstrated in the record. Pay Tel’s customer base is considerably smaller than that of Securus, but it is notable that Pay Tel’s company-wide, per-facility averages of calls and minutes falls between Securus’s medium and high call volume Non-DOC facilities, as shown below.

Call Volume Description	Calls per Year	Minutes per Year	Estimated Jail Size - Occupied Beds ²
Securus’ High 10	281,011 - 1,186,473	6,134,884 - 26,119,012	1,171 to 4,944
Pay Tel’s Average	48,105	513,082	203
Securus’ Medium 10	4,702 - 8,088	67,105 - 69,859	20 - 34
Securus’ Low 10 ³	113 - 284	885 - 1,668	1 - 5

As seen in the graph below, Pay Tel’s cost per minute fits the Siwek Report’s progression of call cost. That is, Pay Tel’s 2012 average cost per minute, including commissions as part of cost, falls between the Securus medium and high volume facility range definitions and are consistent with the expected per minute costs for this size facility.

² Jail Size is estimated based on Pay Tel’s direct experience of approximately 20 calls per occupied bed per month. Securus’s Low 10 is estimated based on infrequent phone usage seen at the smallest facilities.

³ Pay Tel has no experience serving facilities as small as those depicted in the Securus Low 10. Presumably, these are small town police stations or remote police outposts, with extremely low call volume.



* * *

Dated: July 17, 2013

Respectfully submitted,

PAY TEL COMMUNICATIONS, INC.

A handwritten signature in blue ink, appearing to read "Ma Tiller", is written over a horizontal line.

By:

Marcus W. Trathen
Timothy G. Nelson
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Suite 1600
Wachovia Capitol Center
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304
mtrathen@brookspierce.com
tnelson@brookspierce.com